1952.

File No. O Extradition 52.

P 13E

Legal Department
A - BRANCH

Subject:— Opinions under the Indian Extradition Act, 1903

File No. O. Extradition/52.

Gen. 184 a.

249-A

C O N T E N T S.

Legal Department File No. C. Extradition / 1952.

Sr. No.	M.I. / C. No.	Subject	Pages.
		Opinions under the Indian Extradition Act, 1903.	
	C Extradition/52		
1.	2342 ~~2342~~ 15-2-52	Secs. 3 and 9 Whether there is sufficient evidence to justify surrender.	1-4
2.	11171 5-6-52	10088 16-6-52	Sec. 10(3) and 7. re: Detention of the persons arrested by the Thana Police at the instance of Daman authorities. Extention of the period of ~~it~~ detention as the extradition proceedings are not completed.	5-10
3.		12440 23-6-52	Secs. 3 read with sec. 9. Whether there is sufficient to prema facie evidence to justify surrender of the accused for an offence of cheating.	11-12.
4.		14892-A 11-9-52	Whether there is sufficient prima-facie evidence to justify surrender of the accused.	13-14
5.		17052 15-10-52	Re: Extradition proceedings.	15-16
6.		17412 21-10-52	Whether there is sufficient prima-facie evidence to justify surrender of the accused for an offence under sec. 420 read with sec. 109 I.P.C.	17-18
7.	~~20462~~ 28-11-52		P.&S.D. No. 2233/46-45590 A of 21-11-52 forwarding copy of letter No.D 4819-B/129/52 & 28-10-52 from G.Of I.M.of E. Affairs. Re. procedure regarding extradition with ~~P~~-/ French India.	

Ch/1/17

Dml/19/6

L.D
Q9.No.1331/all 21-1-52
1716/all 25.1.52

Submitted.

Id/- G.G.P.
21/1

D.S.(Crim.)

The Government of Jammu & Kashmir being a Part B State, section 9 of the Indian Extradition Act, 1903, applies. Therefore the provisions of the law embodied in section 3 of the Act will have to be followed on the requisition made by that State for the extradition of Durgadas & others for an offence of cheating (section 420 I.P.C.). Now, under sub-section (1) of section 3 the Central Government "may, if it thinks fit, issue an order to any Magistrate who would have had jurisdiction to inquire into the crime if it had been an offence committed within the local limits of his jurisdiction, directing him to inquire into the case." Therefore, the Government which is considering the requisition has to decide whether it is a fit case for directing an inquiry. Now, the functions of the Central Government under sub-section (1) of section 3 have been entrusted to the State Government by the External Affairs Department Notification No. 67/X dated 31-3-1938. Therefore, the Government of the State of Bombay will have to consider whether this is a fit case to direct a Magistrite to inquire into it.

2. On the facts of the case this does not appear to be a fit case. Reduced to the barest essentials the facts are that the complainant Lala Dehra Mall s/o L. Bindra Ban placed with the accused an order for the supply of a specified Diesel Oil Engine 'from July-August shipment', and in pursuance of that order sent a sum of Rs. 2,000/- in advance. The accused accepted that order. Thereby the contract was complete. Subsequently, the complainant

rescinded the contract on the ground firstly, that the price charged by the accused was more than the price quoted by him to another firm, and secondly, that the actual delivery which the accused offered to give was in November although under the contract, according to the complainant, the delivery ought to have been given in July or August or latest on the 1st of Septmeber 1951. It is apparent that on both these points the complainant was in error because, so far as he was concerned, the price charged by the accused to him was the price which they had quoted to him. The mere fact that the accused had quoted a lower price to another customer cannot help the complainant. Similarly, by the words 'July-August shipment' the accused apprently meant shipment in July or August from the country from which the machine was to be imported, as against 'ready stock'. This will be clear from the letter of the accused dated 27-7-1951, wherein different prices are quoted for this very machine- one for the 'ready stock' and the other for 'July-August shipment' . The contention of the complainant that by 'July-August shipment' was meant delivery in July or August or on 1st September 1951 at the latest is not only inconsistent with the above mentioned letter abut is also contrary to the meaning of the term as understood in ordinary commercial parlance. But even though the accused were right on these points, they, on the representation of the Trade Agent of the Government of Jammu and Kashmir in Bombay, agreed to cancel the order and return the money. The complainant without waiting for the return of the money appears to have filed this complaint. Under these circumstances, this is really a matter of civil dispute and no offence of cheating has been made out on the facts of the case. It is, therefore, not a fit case for directing an inquiry under section 3 of the Indian Extradition Act, 1903.

n

R.L.A.

It is not quite a clear whether Jammu and Kashamir can be treated as a Part B State at present for purpose of the Extradition Act (See article 370). It is safer to base our opinion on the conclusion at A-A which should be our reply with the addition of "This does not appear a fit case for extradition.

Office of the R.L.A.

This is really a matter of civil dispute and no offence of cheating has been made out of the facts. This does not appear a fit case for extradition.

Sd/-

Rama brancer of Legal Affairs.

U.R. to P. & S.D.No., 2342, dated the 13th February, 1952.

C.G.R. 12-6-

C 5

Submitted.

At the instance of Daman authorities certain persons mentioned at page 9 ante were arrested and detained by the Thane District Police, pending the conclusion of extradition proceedings against them. The period of two months for which these persons could be detained under the orders of the D.M. expired on 30-5-1952, but as the extradition proceedings are not yet complete, the D.M. has moved Government to extend the period under section 10(3) of the Extradition Act. The D. M's request was received by Government on 31-5-1952 i.e. after the expiry of the period of detention and the P.&S.D. therefore considers that the D.M. must have discharged the accused from custody on expiry of the statutory period. In these circumstances, P.& S.D. considers that there is no question of granting sanction under section 10(3) of the Act; but it is not clear to P.& S.D. whether the D.M. can re-arrest the accused and keep them in custody for a fresh term of two months, pending receipt of the warrent ect. from the Daman Authorities. The R.L.A. is requested to advise.

2. Attention is invited to R.L.A's opinion No. 2938 dated the 20th March 1940. As advised by the R.L.A. therein previous sanction of Government would be necessary if the persons arrested are to be detained for a period exceeding 2 months and consequently, it would not be open to Government to accord sanction after the expiry of the period of two months. As regards the next question viz. whether the Magistrate can re-arrest the accused on release, attention is invited to para 2 of R.L.A's opinion No. 2672 dated 25-3-1941. As advised therein there would be no objection to rearrest the accused; but

but sanction of Government would be necessary to their detention under section 10.

D.S. (Criminal)

Both the questions referred are no doubt covered by the R.L.A's opinions. The first question is covered by R.L.A's opinion No. 2938 dated 20-3-40 and the second question is covered by R.L.A's opinion Nos. 4280 dated 1-5-40 and 2672 dated 25-3-41. If, however, the matter were open, I would respectfully suggest that the opinion on the second question requires reconsideration.

Under section 10(1) of the Indian Extradition Act, 1903, a magistrate can himself issue a warrant of arrest in cases where no warrant has been received or has issued under section 7 but where a warrant under section 7 may be issued. The arrest under such a warrant is subject to the limitations laid down in sub-sections (2), (3) and (4), and one of these limitations as laid down in sub-section (2) is that the detention under such a warrant shall not be for more than two months except under certain circumstances. Those circumstances are that a warrant for arrest under section 7 has been received within the said period of two months or an order under section 9 has been received within that period or a special sanction of Govt. for detention for more than two months has been given. Now, if it is right to hold that the special sanction of the Govt. contemplated by sub-section (3) is <u>previous</u> sanction, that is to say, it should have been given within the period of two months, it would be difficult to hold at the same time that if no such sanction has been received, and the accused has, therefore, been released, the magistrate could order re-arrest of the accused acting under sub-section (1) of

section 10. To permit such re-arrest and consequent detention would be to ignore the limitation imposed by sub-section (3). This limitation cannot be got over by providing that such re-arrest and further detention should be made with the sanction of Govt. because such a procedure would make no meaning of the requiremtnt that the further detention should be under a sanction given previous to the expiry of the first two period of two months.

R.L.A

Office of the R.L.A.

Both the questions referred to theR.L.A. are covered by three previous opinions, the first by opinion No. 2938, dated 20.3.1940 and the second by opinions Nos. 4280, dated 1.5.1940 and 2672 dated 25.3.41. With respect to the second question, the R.L.A. would like to add that the practice should not be encouraged of allowing two months' period to elapse and then resorting to the course of re-arrest. Re-arrest may be confined to exceptional cases where circumstances demand the re-arrest of persons upon unimpeachable evidence.

Sd/- (P.M.L).

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 10088, dated 16th June, 1952.

C.G.R. 12-6-

C 5.

Office of the R.L.A.

The evidence summarised in the letter of the Second Additional Munsiff, Magistrate First Class, Srinagar, discloses a prima facie case for an offence of cheating. Therefore on the assumption that the Indian Extradition Act, 1903 applies to the State of Jammu and Kashmir, this is a fit case for an order by the State Government under section 3 read with section 9 of the Act to a Magistrate having jurisdication to inquire into the crime and submit his report.

Sd/- (P.N.L.)

Remembrancer of Legal Affairs

U.R. to P. & S.D. No. 10441, dated the 23rd June 1952.

C.G.R. 12-6-

C 5

Office of the R.L.A.

The dispute is more or less of a civil nature. The cheque was given in respect of past dues. There was therefore no present delivery of property by the complainant nor any present consent for retention of property. The complainant therefore had sought to take refuge under the second part of the definition of cheating namely, that he was intentionally induced not to file a suit. That fact by itself would not suffice because his right to file a suit still exists. The complainant therefore seeks to make out that he has lost the right to an attachment or arrest before judgment. There is no right in a party to such an attachment or arrest, it is an interlocutory relief at the discretion of the Court. There is nothing to show that the debt has thereby become irrecoverable, and in the absence of clear evidence as to who stopped payment of the cheque and why it is not possible to inform that the accused had no intention to pay. The evidence in this case therefore does not justify a surrender of the accused.

Sd/- (P.M.L.)

Remembrancer of Legal Affairs.

U.O. to P.& S.D. No. 14889-A dated 11th September, 1952.

C.G.R. 12-6-

C 5

Office of the R.L.A.

Seen and returned.

Sd/- (P.M.L.)

Remembrancer of Legal Affairs.

U.R. to P.& S.D., No. 17052/A dated the
15th October 1952.

C.G.R. 12-6-

C 5.

R.I.No. 24054 d/15-10-52.

Office of the R.L.A.

The evidence adduced before the Magistrate makes out a prima facie case to warrant a request for the surrender of the accused for the trial for the offence under section 420 read with section 109, I.P.C.

Sd/- (P.M.L.)

Remembrancer of Legal Affairs.

U.R. to P.& S.D., No. 17412/A, dated the 21 st October, 1952.

C.G.R. 12-6-

C. 5